# IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

***FAO (MVA) No.270 of 2003.***

***Reserved on: 08.08.2007.***

**Decided on: *September 19, 2007***

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***M.D., Himachal Road Transport Corp. & Anr. .....Appellants.***

***VERSUS***

***Ranjit Singh & Ors. .....Respondents.***

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***Coram***

***The Hon'ble Mr.Justice Kuldip Singh, Judge.***

***Whether approved for reporting?[1] No***

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| **For the Appellants:** | **Mr.H.S.Rawat, Advocate.** |
| **For Respondents:** | **Mr.Raman Sethi, Advocate for respondent No.1.** |
| | **Mr.Raj Kumar vice Mr.Vivek Thakur, Advocate, for respondent No.2.** |
| | **Mr.Vikas Bhardwaj, Advocate for respondent No.3.** |

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***Kuldip Singh, Judge***

This appeal is directed against the award dated 4.3.2003 passed by learned Motor Accident Claims Tribunal (1), Kangra at Dharamshala in MACT Petition No.36-P/II/2000 awarding Rs.2,49,053 compensation in favour of respondent No.1 and against respondents No.2, 3 as well as appellants. The respondent No.2 and appellants have been directed to pay 60% amount and respondent No.3, 40%

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[1] *Whether the reporters of the local papers may be allowed to see the Judgment ? Yes*

amount of compensation along with 9% interest from the date of filing of the petition till payment.

***2.*** The facts, in brief, are that respondent No.1 was pillion rider on scooter bearing No.HPY-1838 on 17.9.1999 at about 4.30 P.M. which was being driven by respondent No.3. The further case is that H.R.T.C. bus bearing No.HP-53-0620 came from Joginder Nagar side and it was being driven rashly and negligently by respondent No.2. The bus dashed against scooter near Baijnath on National Highway. As a result of collision, respondent No.3 and respondent No.1 fell down in which respondent No.1 suffered severe injuries. He was taken to hospital and subsequently his left leg under knee was amputated. Respondent No.1 suffered permanent disability due to amputation of his leg. Respondent No.1 was rearing about 300 goats and sheep and was earning Rs.6000/- per month. The amputation of leg has reduced the earning capacity of respondent No.1. Respondent No.1 had spent more than Rs.1 lac on his treatment. He filed petition claiming Rs.5 lacs compensation.

***3.*** The respondent No.2 driver of bus denied that accident took place due to his rash and negligent driving. He submitted that respondent No.3 was driving the scooter rashly and negligently. According to him, respondent No.3 lost control over the scooter and hit the scooter against the stationary bus, which was stopped by him noticing that respondent No.3 has lost control of the scooter. The

case was registered against respondent No.3. He denied his liability to pay the compensation.

***4.*** The appellants also contested the claim and took the plea that petition was bad for non joinder of owner of the scooter and denied that accident took place due to rash and negligent driving of the driver of the bus. It was submitted that petition has been filed in collusion with respondent No.3.

***5.*** Respondent No.3 filed separate reply and admitted that respondent No.1 was pillion rider on the scooter. He submitted that he was driving the scooter in slow, normal speed and cautiously but respondent No.2 driver of the bus was driving the bus rashly and negligently and he struck the bus against the scooter due to which respondent No.1 and he himself suffered injuries. The learned tribunal allowed the petition, as noticed above. The appellants have challenged the impugned award.

***6.*** I have heard the learned counsel for the parties and gone through the record.

***7.*** The learned counsel for the appellants has submitted that the learned tribunal below has not properly appreciated the material on record and has erred in returning the finding that bus driver was negligent to the extent of 60% in causing the accident. It has been submitted that the accident took place due to rash and negligent driving by the driver of the scooter and, therefore, appellants are not

liable to pay any compensation. The learned counsel for respondent No.1 has supported the impugned award.

***8.*** PW-1 Dr.Vaneet Aggarwal has proved the disability certificate Ext.PA of respondent No.1 and has stated that respondent No.1 has suffered 70% permanent disability due to through knee amputation of left leg. PW-2 Dr.Sanjeev Sharma has stated that he had done amputation of left leg of Ranjit on 4.4.2000. He has proved discharge certificate Ext.PB. PW-3 MHC Milap Chand has proved Ext.PC copy of F.I.R. No.106/99 dated 17.9.1999, Police Station, Baijnath under Sections 279/337 I.P.C. According to him, the F.I.R. was got registered by Kamal Kumar, H.R.T.C. driver. PW-4 Dr.A.K.Maney, C.H. Baijnath has stated that on 17.9.1999 he had examined Ranjit Singh aged 29 years who was having crush injury of left lower leg 6" above ankle joint and he issued M.L.C. Ext.PD.

***9.*** PW-5 Ranjit Singh has stated that on 17.9.1999 he was going from Sungal to Paprola on scooter as pillion rider which was being driven by Sandeep Kumar. The scooter met with an accident with H.R.T.C. bus bearing No.HP-53-0620 which was being driven by Kamal Kumar Chaudhary. The accident took place due to rash and negligent driving on the part of bus driver. In the accident, he suffered injuries on his left leg. He was treated in Government Hospital, Baijnath where M.L.C. Ext.PD was issued. He was referred to Dharamshala Hospital and then to P.G.I. Chandigarh. At last his leg was amputated at Ayurvedic College, Paprola. The disability

certificate Ext.PA was issued. He has spent about Rs.1 lac on his treatment, some of the vouchers of treatment are Ext.P-1 to Ext.P-52. In addition to this, he has spent for hiring taxi. In the cross examination, conducted on behalf of respondent No.3, he has submitted that accident took place due to rash and negligent driving on the part of the driver of the bus. In the cross examination, conducted on behalf of the appellants, he has reiterated that accident took place due to high speed of the bus. He has shown his ignorance that scooter driver was prosecuted under Sections 279, 337 I.P.C. He has denied that medical expenses claimed by him are on the higher side.

***10.*** RW-1 Kamal Kumar has stated that he was driver on bus bearing No.HP-53-0620. He was going from Joginder Nagar to Delhi. At the place of accident, a scooter, which was being driven in rash and negligent manner, came from the opposite side, he noticed the scooter and stopped the bus. The scooter driver could not control the scooter and struck against the bus on the wrong side. The accident took place due to rash and negligent driving on the part of the scooter driver. The case was reported to the police and scooter driver was found negligent and challan was put up against him. He has proved his driving licence Ext.RW-1/A. In cross examination, conducted on behalf of the driver of the scooter, he denied his ignorance that the scooter driver was acquitted. He denied that he got recorded wrong F.I.R. He denied that accident took place due to his negligence. RW-2 Sandeep Kumar has stated that he was driving scooter No.HPY-1838 from Sungal to

Paprola. H.R.T.C. bus came from opposite side which was being driven by respondent No.2 rashly and negligently, his scooter came under the bus tyre. He was prosecuted in Baijnath Court but was acquitted. According to him, accident took place due to rash and negligent driving of respondent No.2. He has admitted that he did not possess licence to drive scooter.

***11.*** The respondent No.2, driver of the bus, in his reply to the petition has taken the plea that scooter driver overtook private bus and lost his control of the scooter and hit the bus which was stopped by that time by the driver of the bus. He has stated that driver of the scooter was prosecuted. In his statement RW-1 Kamal Kumar, driver of the bus, has nowhere stated that scooter driver overtook the bus. He has stated that scooter driver was driving the scooter rashly and negligently and lost control of the scooter and struck against the bus on wrong side. PW-5 Ranjit Singh has specifically stated that accident took place due to rash and negligent driving of the bus driver, his statement has been corroborated by RW-2 Sandeep Kumar, scooter driver. There is no reason to disbelieve the statements of these witnesses. There is variation in the stand taken by the bus driver in his reply and the statement made by him in the Court. The bus driver has not led any corroborative evidence. The bus must be carrying some passengers and the Conductor. The driver of the bus has not produced any passenger from the bus as witness. The sole testimony of RW-1 Kamal Kumar is not enough to conclude that the accident

took place due to exclusive negligence of the scooter driver. The bus was on National Highway and a heavy vehicle. The respondent No.2 Kamal Kumar was driving heavy vehicle and he was required to be extra vigilant on the road. The fact cannot be ignored that the scooter driver was prosecuted and according to RW-2 Sandeep Kumar, who was driving the scooter, he was acquitted but grounds of acquittal are not clear. PW-5 Ranjit Singh in his cross examination, conducted on behalf of appellants, has shown his ignorance that the accident took place due to rash and negligent driving on the part of the scooter driver. The cumulative effect of evidence led by both the sides, it is clear that the accident took place due to rash and negligent driving on the part of the bus driver as well as scooter driver. The tribunal has correctly appreciated the material on record in returning finding that accident has taken place due to contributory negligence of both the drivers.

***12.*** Now the question is how much is the contribution of each driver in terms of percentage in causing the accident. There is no clear evidence to this effect on record but the fact remains that respondent No.3 was driving the scooter and respondent No.2 was driving the bus. On a highway the driver of the heavy vehicle is required to be more vigilant. The tribunal has come to the conclusion that the negligence of the bus driver is 60% and that of the scooter driver is 40%. The finding recorded by learned tribunal regarding the percentage of the contribution of the drivers for causing the accident is

reasonable and no fault can be found with such finding. No case has been made out for interference regarding the negligence and contribution of bus driver in terms of percentage for causing the accident. The bus driver has not filed any appeal against the impugned award, he has accepted the award including the finding of percentage of negligence recorded by learned tribunal against him for causing the accident. Similarly, scooter driver has also not filed any appeal against the impugned award and accepted the award. In these circumstances, finding of negligence of the bus driver as well as of the scooter driver for causing the accident is affirmed.

***13.*** The respondent No.1 – claimant has suffered amputation of his left leg and percentage of disability has been assessed 70% permanent disability. The appellants and respondents No.2 and 3 have not led any rebuttal evidence to counter the disability of respondent No.1. The respondent No.1 was 29 years of age at the time of accident. There is no evidence on record in support of the income of respondent No.1. Therefore, the learned tribunal has rightly taken the help of Schedule-II under Motor Vehicles Act, 1988 to ascertain the income of respondent No.1 and to calculate the quantum of compensation. The income of respondent No.1 has been rightly taken Rs.15,000/- per annum under Schedule-II of the Act. The respondent No.1 has produced medical expenses vouchers Ext.P-1 to Ext.P-52. The injured is not expected to keep each and every voucher of the medical expenses. The tribunal has rightly awarded

Rs.43,178.35 towards medical treatment of respondent No.1. The tribunal has awarded Rs.1000/- towards transportation charges of respondent No.1. In my opinion, this amount is reasonable and is not on the higher side. The respondent No.1 was hospitalized from 17.9.1993 to 22.9.1999 as indoor patient at Dharamshala and then from 4.2.2000 to 26.4.2000 in Ayurvedic Hospital, Paprola. The tribunal has taken 7 ½ months period during which respondent No.1 could not earn his livelihood due to injury and has awarded Rs.9375/- at the rate of Rs.1250/- per month for this period. In my opinion, keeping in view the nature of injuries sustained by respondent No.1 in the accident, the amount of Rs.9375/- awarded to respondent No.1 for loss of earning during the period of hospitalization is just and reasonable. The amount of Rs.7000/- awarded to respondent No.1 towards attendant charges is also reasonable in view of the fact that respondent No.1 suffered serious injury which ultimately resulted in amputation of his left leg below knee. In these circumstances, respondent No.1 must have taken help of attendant. Therefore, amount of Rs.7000/- towards attendant charges is also reasonable. The tribunal has awarded Rs.1,78,500/- to respondent No.1 towards future loss of earning by adopting multiplier of 17 and taking income of respondent No.1 Rs.15,000/- per annum and the fact that respondent No.1 has suffered 70% disability. The amount awarded by tribunal under this head is just and reasonable. The tribunal has awarded Rs.10,000/- to respondent No.1 for pain and suffering. The

respondent No.1 has been disabled permanently for his rest of the life. In my opinion, the amount awarded to respondent No.1 under this head is on lower side but respondent No.1 has not filed cross objection or cross appeal, therefore, he will have to remain contented whatever amount has been awarded to him by the tribunal under this head. The tribunal has awarded Rs.2,49,053/- compensation in all to respondent No.1 along with 9% interest per annum from the date of filing of petition under various heads which in my opinion is just and reasonable.

***14.*** The issue No.3 regarding the maintainability of the petition was not pressed before the tribunal. There is no evidence on record that the petition is collusive and it has been filed by respondent No.1 in collusion with respondent No.3. It has been proved that respondent No.3 was driving the scooter and his contribution for causing the accident is 40%, as held above. Therefore, he is liable to pay the compensation to the extent of 40% along with appellants to the extent of 60%. The petition cannot be thrown out on the ground that owner of the scooter was not impleaded as party. The findings recorded by the tribunal on issue No.5 are upheld.

***15.*** The result of above discussion is that the appeal is dismissed with no order as to costs.

***( Kuldip Singh )***
***Judge.***

***September 19, 2007***
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